

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

M.A. YAH,

Plaintiff,

v.

SELECT PORTFOLIO, FANNIE  
MAE FOUNDATION, STEFFI A.  
SWANSON, and JOSEPH TROIA,

Defendants.

8:07CV418

**MEMORANDUM AND  
ORDER**

This matter is before the court on its own motion. On January 20, 2008, the court dismissed Plaintiff's Complaint without prejudice to reassertion in state court. ([Filing No. 11](#) and [Filing No. 12](#).) The court thereafter denied Plaintiff's Rule 59 Motion. ([Filing No. 18](#).) On April 3, 2008, Plaintiff filed a Notice of Appeal of the court's Judgment. ([Filing No. 20](#).) Plaintiff did not submit the appellate filing fee of \$455.00, nor did he submit a motion to proceed in forma pauperis ("IFP"). ([Filing No. 21](#).)

On April 10, 2008, the court entered a Memorandum and Order informing Plaintiff that pursuant to the Prison Litigation Reform Act ("PLRA"), an incarcerated civil appellant is required to pay the full amount of the \$455.00 filing fee by making monthly payments to the court, even if he or she is proceeding in forma pauperis. [28 U.S.C. § 1915\(b\)](#). Therefore, "[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan." [Henderson v. Norris, 129 F.3d 481, 483 \(8th Cir. 1997\)](#) (internal citations omitted).

*Henderson* established the following procedures for notifying pro se prisoners of their appellate filing fee obligations:

(1) When the district court notifies the prisoner ... in a civil action of its judgment, the court shall notify the prisoner that:

(a) the filing of a notice of appeal by the prisoner makes the prisoner liable for payment of the full \$[455] appellate filing fees regardless of the outcome of the appeal;

(b) by filing a notice of appeal the prisoner consents to the deduction of the [fees] from the prisoner's prison account by prison officials;

(c) the prisoner must submit to the clerk of the district court a certified copy of the prisoner's prison account for the last six months within 30 days of filing the notice of appeal; and

(d) failure to file the prison account information will result in the assessment of an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances.

*Id.* at 484.

The court gave Plaintiff until April 30, 2008 to withdraw his appeal in light of the foregoing notification. (See Filing No. 22 at CM/ECF p. 3.) This deadline has now passed and Plaintiff has not responded to the court's Memorandum and Order. Furthermore, Plaintiff has not submitted to the Clerk of court a certified copy of his prison account statement. Accordingly, as set forth in *Henderson*, the court finds that the initial partial appellate filing fee is \$35.

In addition to the initial partial filing fee, Plaintiff must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” [28 U.S.C. § 1915\(b\)\(2\)](#). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the Court. [28 U.S.C. § 1915\(b\)](#). Therefore, after payment in full of the initial partial filing fee, the remaining installments shall be collected pursuant to [28 U.S.C. § 1915\(b\)\(2\)](#):

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

The Clerk of court shall send a copy of this Memorandum and Order to the appropriate financial official at Plaintiff’s institution.

IT IS THEREFORE ORDERED that:

1. Plaintiff shall pay an initial partial appellate filing fee of \$35.
2. After payment of the initial partial appellate filing fee, Plaintiff’s institution shall collect the additional monthly payments in the manner set forth in [28 U.S.C. § 1915\(b\)\(2\)](#), quoted above, and shall forward those installments to the court.
3. The Clerk of court shall send a copy of this order to the parties, to the appropriate officer for Plaintiff’s institution and to the Eighth Circuit Court of Appeals.

May 19, 2008.

BY THE COURT:

*s/Richard G. Kopf*  
United States District Judge